

Internal Revenue Service

Number: **200801005**

Release Date: 1/4/2008

Index Number: 856.02-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02

PLR-113686-07

Date:

September 24, 2007

Trust =

Corp =

State A =

Year 1 =

Date 1 =

Dear :

This is in reply to a letter dated March 14, 2007, and a supplemental submission requesting a ruling on behalf of Trust and Corp. You have requested a ruling that Trust and Corp be granted an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations to file an election for Corp to be treated as a taxable REIT subsidiary (TRS) of Trust under section 856(l) of the Internal Revenue Code.

FACTS:

Trust is a State A corporation that will elect to be treated as a real estate investment trust ("REIT") for its year 1 taxable year. Trust was formerly a fiscal year taxpayer. Its first REIT year began on Date 1 and ended on December 31 Year 1. Trust's primary business is owning and leasing real properties.

Corp's business consists of holding a partnership interest in a partnership that owns certain real estate that generates gross income that would not be qualifying income under section 856(c)(2) or 856(c)(3). In order for Trust to qualify as a REIT, Corp must be a TRS of Trust under section 856(l).

In connection with filing its first federal income tax return as a REIT, Trust underwent an internal review of its tax filings, and it came to Trust's attention that a timely TRS election, which should have been filed no longer than two months and fifteen days following Date 1, was not in fact timely filed to treat Corp as a TRS of Trust. Trust represents that it relies on tax professionals for tax advice in this area, and such professionals failed to advise Trust to make the TRS election.

Trust represents that Trust's management has at all times intended to elect and maintain Trust's status as a REIT beginning with its initial Year 1 short taxable year. Trust further represents that if Trust's management had been aware of the need to file an election to treat Corp as a TRS in order to preserve Trust's REIT status, Trust's management would have caused the election to be filed in a timely manner. Trust has submitted statements under penalties of perjury from its President and Chief Executive Officer and its tax advisor in support of this ruling request.

Trust and Corp make the following representations in support of this ruling request:

- (1) The request for relief was filed by Trust and Corp before the failure to make the regulatory election was discovered by the Service.
- (2) The granting of such relief will not result in Trust or Corp having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trust and/or Corp would have had if the election had been timely made (taking into account the time value of money).
- (3) Neither Trust nor Corp is seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662.
- (4) Neither Trust nor Corp with knowledge of all relevant facts willfully failed to make the section 856(l) election.
- (5) Neither Trust nor Corp has used hindsight in making its decision to seek the relief requested herein.
- (6) Granting the requested relief will not affect any tax years that are closed under the statute of limitations.

LAW AND ANALYSIS:

Section 856(l) provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a taxable REIT subsidiary. To be eligible for treatment as a taxable REIT subsidiary, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Internal Revenue Service (Service) announced the availability of Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a taxable REIT subsidiary. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. The instructions further provide that the effective date of the election cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service. Officers of both the REIT and the taxable REIT subsidiary must jointly sign the form, which is filed with the IRS Service Center in Ogden, Utah.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION:

Based on the information submitted and representations made, we conclude that Trust and Corp have satisfied the requirements for granting a reasonable extension of time to elect under section 856(l) to treat Corp as a taxable REIT subsidiary of Trust as of Date1. Therefore, Trust and Corp are granted a period of time not to exceed 30 days from the date of this letter to submit the Form 8875.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trust otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Trust and Corp is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)